IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.380 OF 1995

Pune Municipal Transport Corporation
through Transport Management
Swargate, Pune - 37 ... Petitioner

V/s.

Shri Anant Gulab Awaghane
resident of Phugewadi, Dapodi
Pune -12 ... Respondent

Mr.R.G. Ketkar for Petitioner

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 16, 2004**

ORAL JUDGMENT:

. The Petition arises from an order passed by the Labour Court in an application filed by the Respondent-workman under the Industrial Employment (Standing Orders) Act. The respondent-workman was employed as a driver with the Petitioner. It appears that he was chargesheeted. An enquiry was instituted against him on 12.10.1992. Prior to that, he was suspended on 16.6.1990, pending enquiry. Aggrieved by the order of the suspension, the respondent filed a complaint under the MRTU & PULP Act. The prayers in the complaint were as follows:

(a) It be declared that opponent has engaged in and is engaging in unfair labour practice as

stated in para 2 of the complaint.

(b) It be declared that order dated 28.11.1990 and 5.1.1991 being illegal and thereby the opponent be directed to pay the suspension allowances including the other allowances as per the provisions of the model Standing Orders till the finalisation of the enquiry.

(c) An ex-parte order be granted directing the opponent not to proceed with enquiry in pursuance to chargesheet dated 16.6.1990.

(d) Any other orders which meet the ends of justice.

2. An interim application was also filed by the respondent claiming subsistence allowance and for a stay of the enquiry proceedings. Ad-interim relief was granted and the enquiry proceedings were stayed. The petitioner herein, therefore, made an application to the Labour Court on 8.10.1999 praying that ad-interim relief granted be vacated. They also stated that they were required to pay only 50% of wages as subsistence allowance under the Rules applicable.

3. It appears that this complaint has been dismissed by the Industrial Court. Thereafter the Petitioner had to face another round of litigation at the behest of the Respondent. The respondent filed an application under the Industrial Employment (Standing Orders) Act claiming subsistence allowance under section 10A of that Act. The claim made was for Rs.40,000/- for the period from 25.7.1992 onwards on the basis that the provisions of the Industrial Employment (Standing

Orders) Act are applicable and not the provisions of Regulation 65 of the Pune Municipal Transport Service Regulations, framed under the Bombay Provincial Municipal Corporations Act, 1949. The Labour Court by the impugned order has granted the application and the Corporation has been directed to pay compensation at the rate claimed by him in the application.

4. The Labour court has granted this application despite the written statement of the Petitioner indicating that in an earlier complaint being complaint (ULP) No.21 of 1991 a similar prayer was made for subsistence allowance. The Labour Court has rejected the submission made on behalf of the Petitioner that the applications made under different provisions of law but for the same relief were not maintainable. The Labour Court has observed that the application made under the Industrial Employment (Standing Orders) Act is maintainable since the claim for subsistence allowance had been made earlier under the MRTU & PULP Act. Once the same prayer is made it matters little as to whether the prayer is made under one Act or the other.

5. The Labour Court has erroneously not considered the fact that prayer clause (b) of the earlier complaint was for granting of subsistence allowance. The order made in the interim application directed the Petitioner

to complete the enquiry. However, when a similar prayer for subsistence allowance was made in that complaint and was refused by the interim order it is difficult to understand how the same claim could have been entertained under the Industrial Employment (Standing Orders) Act. There is no doubt that the petitioner has paid to the respondent the subsistence allowance payable under the Regulation 65 of the Pune Municipal Transport Service Regulations. The order of the Labour Court is, therefore, erroneous and is set aside in the facts and circumstances of this case. The larger issue as to whether the provisions of Regulation 65 would apply or the provisions of the Industrial Employment (Standing Orders) Act would apply is not being considered in this writ petition.

6. Writ Petition is, therefore, allowed. No costs.